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PATENT

#12/

Election

Serial No. 09/755424

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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|-------------|-----------------------------------|-----------------|------------------|
| Applicant: | Guzik | Examiner: | H. Phan |
| Serial No.: | 09/755424 | Group Art Unit: | 3738 |
| Filed: | January 5, 2001 | Docket No.: | 01610.0103-US-01 |
| Title: | FOCUSED BEAM CUTTING OF MATERIALS | | |

CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being deposited in the United States Postal Service, as first class mail, with sufficient postage, in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on February 14, 2003.

Hallie A. Finucane
Name

Hallie A. Finucane
Signature

RESPONSE TO RESTRICTION REQUIREMENT

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FEB 25 2003

TECHNOLOGY CENTER R3700

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

In response to the restriction requirement dated January 14, 2003, Applicant hereby provisionally elects, with traverse, species 1, 3 and 5. Applicant also notes that that the election of Group I, claims 1-23 and 46-49 in Paper No. 7, was with traverse.

The claims readable on species 1 include claims 1-4, 6-23 and 46-49. The claims readable on species 3 include claims. The claims readable on species 5 include claims 1-14, 18-23 and 46-49. Applicant asks that the Examiner confirm that the second species 5 for the fluid beam is part of the species 5 election for the infrared laser light beam, since this may change the claims that are readable on species 5.

Although Applicant hereby provisionally elects to prosecute claims 1-4, 6-23 and 46-49 for species 1, claims 1-8, 10-23, and 46-49 for species 3, and claims 1-14, 18-23 and 46-49 for species 5. Applicant respectfully requests the Examiner to withdraw the Election/Restriction Requirement as to species 2, 4, 6 and second species 5., and to proceed with examination of all pending claims 1-23 and 46-49.

The Examiner contends that no claim appears generic to all of the above-identified species. A generic claim is a claim that includes no material element additional to those recited in the species claims, and one that comprehends within its confines the

organization covered in each of the species. MPEP § 806.04(d). A generic or genus claim is a claim that may include two or more of the disclosed embodiments within the breadth and scope of the definition of an invention. MPEP § 806.04(e).

Applicant respectfully asserts that claim 1 is a generic claim to all of the species identified by the Examiner. Claim 1 reads on each of the species identified by the Examiner. Each of the claims to species 1 and 2 identified by the Examiner include, in various forms, elements directed to the material segment. Each of the claims to species 3 and 4 identified by the Examiner include, in various forms, elements directed to cutting controlled by a process control unit. Each of the claims to species 5, 6, and the second species 5 identified by the Examiner include, in various forms, elements directed to the beam. As such, claim 1 is a generic claim to the species claims.

Applicant traverses the requirement to elect species because the determination of species is improper. Claims to be restricted to different species must be mutually exclusive (MPEP § 806.04(f)). The general test for when claims are to be so restricted is that one claim recites limitations which under the disclosure are found in a first species but not in a second species, while a second claim recited limitations disclosed only for the second species and not for the first (MPEP § 806.04(f)). It is important to note that there is a difference between showing different embodiments of an invention and different species that are mutually exclusive of each other.

The determination of, for example, the species in the instant case does not meet this test of mutual exclusivity. As an illustrative example, in some embodiments, the cutting processes relating to species 3 and 4 use a digital image. Suitable digital imaging processes include, for example, video imaging, computerized 3D enhancement and scanning phase measurements (page 8, lines 16-19 and page 25, lines 30-34 of the specification). Species 3 and 4 are simply different embodiments of digital imaging. Use of a video camera does not exclude scanning phase measurement. One or both of these processes could be done at the same time. Therefore, species 3 and species 4 are not mutually exclusive.

Further, regarding species 5 and 6, the species are simply two different laser light sources at differing wavelengths. Cutting with one light beam will not prevent cutting with the other light beam, and both light beams could be utilized at the same

time. Applicant respectfully asserts that it would not be an undue burden on the Examiner to search and examine all the species listed. In addition, cutting with one of the light beams of species 5 and 6 would not prevent one from cutting with a fluid beam in the second species 5 at the same time. Therefore, species 5, 6 and second species 5 are not mutually exclusive.

If the Examiner disagrees with the contention herein that the species election is improper, the Examiner is requested to state reasons why the particular species identified are mutually exclusive of each other.

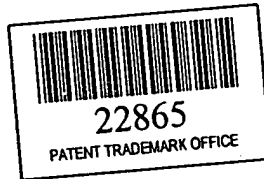
Furthermore, Applicant respectfully asserts that it would not be an undue burden on the Examiner to search and examine all the species listed. Many of the listed species are not mutually exclusive, and so would not present an extra burden to the Examiner.

Accordingly, since the identification of species is improper, Applicant respectfully requests that the requirement to elect species be withdrawn and that the instant application continue to examination.

Any questions regarding this communication should be directed to the undersigned attorney at 952-253-4134.

Respectfully submitted,

Altera Law Group, LLC



Date: February 14, 2003

By: Hallie A. Finucane
Hallie A. Finucane
Reg. No. 33,172
HAF/mar

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Guzik Examiner: H. Phan
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Filed: January 5, 2001 Docket No.: 01610.0103-US-01
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Hallie A. Finucane
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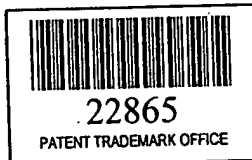
Assistant Commissioner for Patents
Washington, D.C. 20231

- Response to Restriction Requirement
- Transmittal Sheet
- Return postcard

Authorization is hereby given to charge any additional fees or credit any overpayments that may be deemed necessary to Deposit Account Number 50-1038.

Respectfully submitted,

Altera Law Group, LLC



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